

*Jasper Jones*, Esq; and *Frances* his Wife, which said *Frances* was the only Daughter and Heir at Law of *Francis Leigh* of *Puttenham*, in the County of *Surry*, Esq; } Appellants.

*John Bennett*, Gent. and *Mary* his Wife; *Henry Spencer*, Gent. and *Anne* his Wife; *William Vade*, *Francis Leigh*, Esq; *Richard Leigh*, *Jasper-Leigh Jones*, *Thomas Leigh* of *Farnham*, *Thomas Wildman* and *Dorothea* his Wife. *Fitz-William Plumtree*, Sir *Thomas Wynn*, Bart. and *William Fawkes* } Respondents.

### THE APPELLANTS CASE.

**T**HAT Sir *John Leigh*, late of *Addington* in the County of *Surry*, Knt. being seized in Fee of a Real Estate of 2200 *l.* a Year in the Counties of *Surry*, *Kent* and *Middlesex*, and having no Issue living, and being desirous of having Issue to inherit his Estate, he, on, or about the 15th of *May*, 1733, intermarried with *Elizabeth Vade*, the Daughter of the Respondent *William Vade* (who had been a Surgeon in the Family upwards of Twenty Years then past).

Soon after which Marriage, the Respondents *John Bennett* and *Mary* his Wife, and *Anne Spencer*, (by her then Name of *Anne Leigh*, the said *Mary* and *Anne* being or claiming to be Cousins and Heirs at Law of the said Sir *John Leigh*) preferred their Petition to the then Lord High Chancellor, grounded upon Affidavits made by several Servants who had been turned away by the said Sir *John Leigh*, and praying that a Commission of Lunacy might issue against the said Sir *John Leigh*, which was accordingly ordered, and that each Side should give in the Names of six Gentlemen in the said County of *Surry* to be Commissioners in the said Commission, and that each Side should strike out three of them, and that the remaining six should be the Commissioners; and that a special Jury of Gentlemen in the said County should be struck, and which consisted of eighteen Gentlemen of great Credit and Reputation residing at or near *Croydon*, within three Miles of *Addington*, the Place of Sir *John Leigh*'s Residence, and such Commission was soon after accordingly executed at *Croydon*, on the 2d and 3d Days of *August* 1733, before Sir *John Lade*, Bart. *William Hoskins*, *Samuel Atkinson*, *Thomas Scawen* and *John Bridges*, Esqrs. And the Appellant *Jasper Jones*, and the said Jury, unanimously brought in their Verdict, that the said Sir *John Leigh* was not a Lunatick, but was sufficient for the Government of himself and his Estate.

That Sir *John Leigh* having been put to great Expence in defending himself against the said Petition, often after declared his great Displeasure against the Respondents *Mary Bennett* and *Anne Leigh*. And that if they were his Heirs at Law (which he in no sort admitted, they being utter Strangers to him) they should not be the better for any Part of his Estate; and thereupon Sir *John* himself gave express Orders and Directions to prepare a Draft of his Will, whereby he gave, in case of Failure of Issue of his own Body, all his Real Estates to his Cousins, the Appellant *Frances Jones*, and the Respondent *Francis Leigh*'s Father, in equal Moieties, subject to a Rent-Charge of 800 *l.* a Year to his Lady for Life, and some other Legacies for her Benefit.

Which Will bore Date the 27th of *August* 1733, and was duly executed by Sir *John Leigh*, and thereby he devised to Dr. *Bernard*, and the Respondent *Vade*, and their Heirs, all his Manors, Lands, and Hereditaments in the Counties of *Surry*, *Kent*, and *Middlesex*, in Trust to raise so much Money, by Sale or Mortgage as would be sufficient to pay all his Debts, and the Debts of his late Son *Francis Leigh* deceased, and also so much of his Funeral Expences and Legacies as his Personal Estate, not Specifically given, should fall short to pay, and afterwards to raise and pay to his dear and loving Wife Dame *Elizabeth Leigh*, for her Life, the clear yearly Sum of 800 *l.* by half yearly Payments, in full of her Dower, and should permit his said Wife to enjoy, for her Life, his Mansion-House and Gardens at *Addington*, with the Lands and Grounds which he usually kept in his own Possession, and for the Support thereof he charged his Estate with 100 *l.* a Year.

And subject thereto, he devised all his Real Estate, to the first and other Son and Sons of his own Body, in Tail Male, and in Default of such Issue, to his Daughters as Tenants in Common, and not as Joint Tenants, and the Heirs of their Bodies, and in Default of such Issue.

As to one Moiety of his said Manors, Lands, and Hereditaments subject as aforesaid, he devised the same to *Francis Leigh* of *Hawley* in the County of *Kent*, Esq; for his Life, with Remainder to Trustees to preserve contingent Remainders, and after the decease of the said *Francis Leigh*, to his first and other Sons in Tail Male, and in Default of such Issue, to the Use of his Cousin the Appellant *Frances Jones*, and the Issue Male of her Body.

And as to the other Moiety of the said Manors, Lands, and Hereditaments, he devised the same to the Appellant *Frances Jones*, and the Issue Male of her Body, and in Default of such Issue, to her Daughters, and in Default of such Issue to the Respondent *Thomas Leigh*.

And he further gave to his Wife all her Jewels, and also all his Plate, Household Goods, Coaches and Horses, and he gave to two Persons therein named 30 *l.* a Year a-piece for their Lives, and appointed his Wife Executrix of his said Will.

Lady *Leigh* dying on or about the 27th of *January* 1736, without Issue, and *Francis Leigh* Father of the Respondent *Francis Leigh*, being then also dead, Sir *John Leigh* made a new Will, bearing Date the 30th of *January*, 1736, whereby he devised to the Respondents *Fitz-William Plumtree* and *Thomas Wildman* and their Heirs, all his Manors, Lands, and Hereditaments in the County of *Surry*, in Trust to raise so much Money, by Sale or Mortgage thereof, as would be sufficient to pay all his Debts, and the Debts of his late Son *Francis Leigh*, and also his Funeral Expences and Legacies.

And as to one Moiety of the Premises (charged as herein after is mentioned) he devised the same to the Respondent *Francis Leigh* for his Life, with Remainder to the said Trustees, to preserve contingent Remainders, Remainder to the first and other Son and Sons of the Respondent *Francis Leigh*, and the Issue Male of his Body; and in Default of such Issue, to his Cousin the Appellant *Frances Jones*, and the Issue Male of her Body.

And as to the other Moiety of the said Manors and Premises, he devised the same to the Appellant *Frances Jones*, and the Issue Male of her Body; and in Default of such Issue, to the Issue Female of the said Appellant; and in Default of such Issue, to the Respondent *Thomas Leigh*, and the Issue Male of his Body.

And he devised his Manor of *East-Wickham* and *Stains*, and a Fee-Farm Rent of 50 *l.* a Year issuing out of *Stanwell* in the County of *Middlesex*, to his Father-in-Law the Respondent *Vade* and his Heirs, and gave to *John Stalker*, an Annuity of 30 *l.* a Year for his Life, and gave all his Personal Estate to the Respondent *Vade*, and charged his Estate in the County of *Surry*, with the Payment of his own and his late Son's Debts, and appointed the Respondent *Vade* Executor thereof.

After this, Sir *John Leigh* suffered, as is pretended, one or more common Recoveries of his Estate; and by Indentures of Lease and Release, bearing Date the 9th and 10th of *September*, 1737, purporting Conveyances of all his said Real Estate to the Respondents Sir *Thomas Wynn*, *William Fawkes*, and *Thomas Wildman*, and their Heirs.

To the Use of himself for Life, without Impeachment of Waste, with Remainder to Trustees during his Life, to preserve contingent Remainders, Remainder to his first and other Son and Sons in Tail Male, Remainder to his Daughters in Tail general, and in Default of such Issue.



Then as concerning the Manor of *Addington*, and all other the Premises in the County of *Surry* (chargeable with an Annuity of 40 *l.* a Year to the said Respondents *Wildman* and his Wife, for their Lives and the Life of the longer Liver of them) as to one Moiety thereof to the Use of the Respondent *Francis Leigh* for his Life, with Remainder to Trustees, to preserve contingent Remainders, Remainder to his first and other Son and Sons in Tail Male, Remainder to the Respondent *Richard Leigh* an Infant, Brother of the Respondent *Francis Leigh* for his Life, Remainder to his first and other Son and Sons in Tail Male: And for Default of such Issue as to the same Moiety, and also as to the other Moiety of the same Premises in the County of *Surry*, to the Use of the Appellant *Frances Jones* for her Life, with Remainder to the Trustees during her Life, to preserve contingent Remainders, Remainder to Trustees for a Term of Five Hundred Years, in Trust for raising Portions for Daughters and younger Sons of the Appellant *Frances Jones*, as therein is mentioned, Remainder to the first and other Sons of the said Appellant *Frances Jones* in Tail Male, Remainder to her Daughters and the Heirs of their Bodies, Remainder to the Respondent *Thomas Leigh* and his Heirs.

And as to the Premises in the Counties of *Kent* and *Middlesex* (being of the yearly Value of 300 *l.* or thereabouts) to the Use of the Respondent *Vade* and his Heirs for ever.

In which Settlement is contained a Power for Sir *John Leigh* to make Leases of any Part of the Premises, as is usual; and also a Power to Revoke or make Void all and every the Uses therein contained, so as such Revocation was in the Presence of three Persons therein named (all particular Friends of Sir *John Leigh*) their Executors, Administrators, or Assigns: And there is also a Power for the said Trustees, after the Decease of Sir *John Leigh*, to raise out of the Rents and Profits, or by Mortgage or Sale of Part of the Premises in the County of *Surry*, so much Money as would effectually pay and discharge all such Debts as Sir *John Leigh* might owe at the Time of his Death.

Sir *John Leigh* died Nov. 16, 1737. That Sir *John Leigh* died the 16th of November 1737, without Issue; upon whose Death the Respondent *Francis Leigh*, and the Appellants, in Right of the Appellant *Frances Jones*, entered upon the said Estate in the County of *Surry*, and enjoyed the same quietly, till in or about Easter Term 1739, when the Respondents *John Bennett* and *Mary* his Wife, and *Henry Spencer* and *Anne* his Wife delivered Ejectments.

10th of May, 1739. Respondents *Bennett* and *Spencer*, and their Wives brought their Bill. And on the 10th of May 1739, they exhibited their Bill in the Court of *Chancery*, against the Appellants, and the Respondent *Jasper-Leigh Jones* their eldest Son, and against the Respondents *Francis Leigh* and *Richard Leigh* his Brother, *William Vade*, *Fitz-William Plumtree*, *Thomas Wildman* and *Dorothea* his Wife, *Thomas Leigh* of *Farnham*, *John Stalker*, Sir *Thomas Wynn*, and *William Fawkes*, thereby setting forth, That the said then Plaintiffs *Mary* and *Anne* were Cousins and Heirs at Law of Sir *John Leigh*; and charging that the said Sir *John Leigh* was at the Times of executing the said last mentioned Will and Settlement, and suffering the Recoveries therein mentioned, and for many Years before, and at the Time of his Death, under an Insane State of Mind, and incapable of knowing the Contents of the said Will, Recoveries and Settlement: And that the Respondent *Vade* and the Appellants, and the Respondent *Francis Leigh*, or one of them, gave Instructions in what Manner the said Will and Settlement were to be made, and gave Directions under their Hands, or otherwise, to the Respondent *Wildman*, touching the Drawing thereof, or touching the Disposition of the Estate of the said Sir *John Leigh*, without the Privity, Consent, or Direction of Sir *John Leigh*.

And praying by their said Bill, that the said Settlement might be set aside for the great Fraud and Imposition in the obtaining the same, and that the said Will might be set aside for the like Fraud and Imposition, or that the Testimony of the said then Plaintiffs Witnesses, relating thereto, might be perpetuated in the said Court of *Chancery*; and that in the mean time, and until the said then Plaintiffs Right could be determined at Law, the Appellants, and the said other Respondents, might be restrained from committing Waste upon the Premises by Injunction, and that all the Deeds and Writings relating to the said Estates, might be brought into Court for safe Custody: And in case it should appear, that the Right and Title of the then Plaintiffs was merely at Law, that then the Appellants and the said Respondents might be restrained from setting up any Terms for Years, or other Incumbrances, upon the Trial of any Action at Law brought, or to be brought by the said then Plaintiffs touching the Premises; and that the Appellants and the other Respondents might come to an Account with the then Plaintiffs, as well for the Rents and Profits of the said Real Estate, as also for the Waste committed by them since the Death of the said Sir *John Leigh*.

To which Bill, the Appellants and the said Respondent *Francis Leigh*, put in their Answers, and thereby set forth the said Commission of Lunacy, and the Execution thereof, and the said Verdict, and the Appellants, by their said Answer denied that they gave any Instructions or Directions to any Person or Persons employed in drawing or preparing the said Wills or Settlement, or touching the Disposition of any Part of the Real or Personal Estate of the said Sir *John Leigh*, save that the Appellant *Jasper Jones*, at the Desire of Sir *John Leigh*, named two Trustees in the said Settlement: And that the Appellants believed, that Sir *John Leigh* gave the Respondent *Thomas Wildman* the said former Will of the 27th of August 1733, with verbal Instructions to draw a new Will; and that the said Settlement was perused and settled by *John Ward* of the *Inner Temple* Esq; by the Order and Direction of Sir *John Leigh*.

And the Appellants and the Respondent *Francis Leigh*, by their said Answer, also denied all other Charges in the said Bill, relating to any Fraud or Imposition in obtaining the said Will and Settlement, or that Sir *John Leigh* was, at the Time of the Execution thereof, under any Insane State of Mind, or incapable of knowing or judging of the Contents of the said Will and Settlement, or of giving proper Directions or Instructions for the drawing or preparing thereof: And the Appellants and the Respondent *Francis Leigh* averred, that they were wholly Strangers to the preparing and executing the said Will and Settlement, and all Transactions concerning the same, otherwise than as aforesaid, and insisted, that they were well intitled to the said Estates, devised and settled upon them by the Will of Sir *John Leigh*, and by the Settlement of the 9th and 10th of September 1737, or one of them.

That the Appellants and the Respondent *Francis Leigh* being entire Strangers to the Methods of proceeding in the Courts of Justice, and they residing upwards of twenty Miles distant from Sir *John Leigh*, and never seeing Sir *John* above two or three Times in a Year, and then upon Visits of Respect and Friendship to Sir *John*, they were entirely ignorant of any undue Influence which the Respondent *Vade* might have over Sir *John Leigh*, and to all Fraud and Imposition alledged by the Respondents in their Bill, as to the obtaining of the said Will and Settlement: And there being several Creditors upon Specialty and Simple Contracts of Sir *John Leigh*, who were clamorous for Payment of their Debts, the Appellants and the Respondent *Francis Leigh*, were prevailed upon to join with the Respondent *Vade* in a Cross Bill; and accordingly,

In *Michaelmas* Term, 1739, the Appellants and the Respondents *Francis Leigh* and *Vade* exhibited their Bill in the said Court of *Chancery*, against the Respondents *John Bennett* and *Mary* his Wife, *Henry Spencer* and *Anne* his Wife, and the Respondents Sir *Thomas Wynn*, *William Fawkes*, and *Thomas Wildman*, the Trustees named in the said Settlement, setting forth, that the said Sir *John Leigh* died indebted to several Persons, to the Amount of 8000 *l.* and upwards, upon Mortgages, Specialties, and Simple Contracts, which being by the said Will and the Settlement of the 10th of September 1737, charged upon his Estate in the County of *Surry*.

The said Cross Bill prayed, That the said Trustees might be ordered to execute the said Trust reposed in them, and that the Appellants and the Respondents *Francis Leigh* and *William Vade* the Plaintiffs in the said Bill might be at Liberty to examine Witnesses to the said Will and Settlement, and to the sanity Capacity and Understanding of Sir *John Leigh*, at the Time of executing the said Will and Settlement, and that their Testimony might be preserved and perpetuated.



Soon after which Cross Bill, the Appellants and the Respondents *Francis Leigh* and *William Vade*, were advised to obtain an Order of the Court of *Chancery*, That the Respondents *Bennett* and *Spencer* and their Wives, might make their Election, whether they would proceed in that Court, or at Law; and if in that Court, then their Proceedings at Law were thereby stayed by Injunction: And the said Respondents having made their Election to proceed in the Court of *Chancery*, and having put in their Answers to the Cross Bill, and the Plaintiffs in both Causes having replied, and both Causes being at Issue, divers Witnesses were examined on both Sides; and both the said Causes came on to be heard together before the Right Honourable the Lord High Chancellor of *Great Britain*, on the 26th Day of *May* 1742, whereupon his Lordship was pleased to adjourn the said Causes to the first Day of Causes in the then next Term; and in the mean time any of the said Parties, or their Solicitors, were to be at Liberty to inspect all the Deeds and Writings relating to the Matters in Question, in the Custody or Power of any of the Parties, their Solicitors, or Clerks in Court, to be ascertained by the Affidavits of the respective Parties, and to be produced upon Notice at the further Hearing of the Causes. And in pursuance thereof, all Deeds and Writings being produced and inspected on both Sides:

Afterwards, on the 4th Day of *June* 1742, on the Motion of the Plaintiffs in the original Cause, and without the least Knowledge of, or Notice to the Appellants, or the Respondent *Leigh*, but on hearing the Respondent *Wildman* only, another Order was made in the said Original Cause, by the Lord High Chancellor, with the Consent of *Wildman*; and on the Plaintiffs submitting to pay him his Costs, that he the said *Wildman* should forthwith carry into the Office of Mr. Prothonotary *Thompson* all the Rolls, Writs of Entries, and other the Proceedings by him taken out and detained, of the Three several Common Recoveries therein mentioned (and which the Plaintiffs in the Original Cause, charge and insist were obtained by Imposition from the said Sir *John Leigh*, and whilst he was under such Incapacity of Mind as aforesaid) in order that such Recoveries might be filed on Record in the said Court of *Common Pleas*, and that the said *Wildman* should proceed to perfect the same, according to the Course of the said Court.

That soon after the Respondent *Wildman*, in Obedience to the last mentioned Order, passed all the said Recoveries thro' the several Offices, and procured the same to be recorded and perfected, as if they had really and in Fact passed in *Easter* Term 1737, in the Life-time of Sir *John Leigh*.

28th of June,  
1742,  
Decree in  
*Chancery*.

That afterwards the said Causes were heard before the Lord Chancellor on the 28th of *June* 1742, whereupon his Lordship was pleased to declare (without any Mention of the Recoveries perfected as aforesaid, or of the said Wills of the said Sir *John Leigh*) that the said Indentures of Lease and Release, dated the 9th and 10th of *September* 1737, were procured from Sir *John Leigh* by Fraud, Imposition, and Circumvention, and by Means of the undue Influence obtained by the Respondent *Vade*, over the Weakness of Sir *John Leigh*, and that the same ought to be set aside; and did therefore decree, That the Cross Bill should stand dismissed with Costs: And in the original Cause decreed, That the said Deeds should be set aside and delivered up to be cancelled, and that the Appellants, and the other Defendants in that Cause, should by proper Conveyances and Assurances in the Law (as the Master to whom the said Causes were referred, should think fit) convey the Premises in question to the Respondents *Mary Bennett* and *Anne Spencer*, the Heirs at Law of Sir *John Leigh*, and their Heirs, as Tennants in common: And that the Appellants, and the Respondents *Vade* and *Francis Leigh* should deliver Possession of the said Estates to the Plaintiffs in the said Cause, and should account for the Rents and Profits thereof, and for the Monies raised by Sale of any Wood or Timber, since the Death of Sir *John Leigh*, and should pay one Moiety thereof to the Respondents *Bennett* and his Wife, and the other Moiety to the Respondents *Spencer* and his Wife, and that all the Deeds and Writings relating to the said Estates, should be produced before the said Master, upon Oath, and deposited with him for the equal Benefit of the said Respondents *Bennett* and *Spencer* and their Wives: And that the Appellants, and the said other Respondents should be restrained from receiving any of the Rents and Profits of the Premises, and from cutting down any Wood or Timber from off the same for the future.

And the said Decree was to be binding, as against the Respondents *Richard Leigh* and *Jasper-Leigh Jones*, (the Appellants eldest Son) who are Infants, unless they being served with *Subpoenas* to shew Cause against the same, should within Six Months after they should attain their Ages of Twenty-One Years; shew good Cause to the contrary.

And the said *Bennett* and *Spencer*, and their Wives, were quietly to hold and enjoy the Premises against the said Infants in the mean time: But the said Decree was to be without Prejudice to any Remedy or Relief, which any of the Creditors of Sir *John Leigh* might then after seek, by Virtue of the Proviso in the said Settlement of the 10th of *September* 1737, for raising Money for the Payment of Sir *John Leigh*'s Debts.

And it was further Ordered, That the Respondents *Vade* and *Wildman*, should pay to the said Respondents, *Bennett* and his Wife, and *Spencer* and his Wife, their Costs of that Suit to the time of such Decree, and the Consideration of the subsequent Costs and all further Directions were reserved till after the Master should make his Report.

That the Appellants, being served with a Writ of Execution of the said Decreeal Order, have been obliged, in Obedience thereto, to deliver up to the Respondents *Bennett* and *Spencer* and their Wives, the Possion of that Part of the Estate in question, which was devised and settled upon the Appellant *Frances* as aforesaid, and have produced upon Oath, all Deeds and Writings before the said Master, and the said *Bennett* and *Spencer* and their Wives, have left with the said Master a Draft of a Deed, whereby, and by a Fine therein covenanted, to be levied, the Appellants are to convey the Estates in question to the Respondents *Mary Bennett* and *Anne Spencer* and their Heirs, and the said Respondents are now proceeding to have the said Deed settled by the said Master.

*The Appellants conceiving that they are aggrieved by the said Decree, have appealed to your Lordships from the same, and humbly hope that the said Decree shall be reversed (amongst others) for the REASONS following:*

Reasons I

For that there is not the least Evidence or Ground of any Fraud, Imposition, Circumvention, or undue Influence in the Appellants, or the Respondent *Francis Leigh* (to and upon whom, the greatest Part of Sir *John Leigh*'s Estate is devised and settled, by his several Wills of 1733, and 1736, and by the Settlement of 1737) to procure either of the said Wills or Settlement, and as they are intirely Innocent, and not in any sort concerned in, or privy to any undue Means used in obtaining the said Wills and Settlement, or either of them, from Sir *John Leigh*, so the Appellants humbly hope they are to be distinguished from the Respondent *Vade*, who is the Person charged by the Decree, with such Practices, and who alone (if Guilty) ought to be the Sufferer, and not the Appellants; and the rather,

II

For that it manifestly appears to have been the constant Intention of the said Sir *John Leigh*, as well by his Will of the 27th of *August* 1733, as by his Will of the 30th of *January* 1736, and the said Indentures of Lease and Release of the 9th and 10th of *September* 1737, to give great Part of his Real Estate after his Death, without Issue, to the Appellant *Frances* and her Issue.

III

For that it fully appears by the Proofs in the Cause, that the Will of the 30th of *January* 1736, and the Indentures of Lease and Release of the 9th and 10th of *September* 1737, were duly executed by Sir *John Leigh*, and that the said Will was read over to him just before he executed the same, and that he was then of sound Mind, Memory, and Understanding, and it is fully proved in the Cause, by many Witnesses of undoubted Characters and Reputation, and found by the Inquisition upon the Commission of Lunacy, upon the Oaths of eighteen Gentlemen of great Credit in the Neighbourhood where he resided for the greatest Part of his Life, that Sir *John Leigh*, at the time of taking the said Inquisition was not a Lunatick, but was sufficient for the Government of himself and his Manors, Messuages, Lands, Tenements, Goods and Chattels.



- IV. For that the said three Recoveries so entered on Record, and pretended to be perfected by the Respondent *Wildman*, as of *Easter Term 1737*, (above five Years after the Death of the said *Sir John Leigh*) were not Recoveries duly executed by the said *Sir John Leigh* in his Life-time, and ought not therefore to be of any Effect or avail whatsoever, or that if such Recoveries were duly suffered by the said *Sir John Leigh*, that yet they and the said Lease and Release of the 9th and 10th of *September 1737*, made but all one Conveyance in Law or Equity; and that therefore if the said Lease and Release ought to be set aside (as by the said Decree they are ordered to be) for Fraud and Imposition, the said Recoveries ought also for the same Reason to have been decreed to be set aside, such Fraud and Imposition destroying totally, the very Existence of such Recoveries and all Intention whatsoever in the said *Sir John Leigh*, either to revoke any former Will of his, or for any other Purpose whatsoever.
- V. For that as the Respondents *Bennett* and *Spencer*, and their Wives, by their Bill in the Court of *Chancery*, grounded their Relief upon the Insanity of *Sir John Leigh*, and prayed (amongst other Things) that the Testimony of their Witnesses might be perpetuated in that Court, and that the Appellants and the Respondents, *Francis Leigh* and *William Vade*, might be enjoined from committing Waste on the several Estates of the said *Sir John Leigh*, until their Right could be determined at Law; so the Appellants applied their Proofs to the Sanity of *Sir John Leigh* and his Capacity to transact his Affairs, and dispose of his Estate, which was the Point put in Issue in both the said Causes, and the Appellants humbly apprehend, and are advised, that the Strength of the Evidence, and Credit of the Witnesses, is on their Side, and that the said Indentures of Lease and Release of the 9th and 10th of *September 1737*, ought not to have been set aside, without first directing an Issue at Law to try whether the same were fairly obtained or not.
- VI. In case the said Settlement should be set aside, so as that the Appellants are to have no Benefit thereby, the Appellants humbly hope, that the same should be set aside for all other Purposes whatsoever, and that in such Case the Will of the said *Sir John Leigh*, dated the 30th of *January 1736*, shall take Effect, or at least that an Issue at Law shall be directed to try, whether the said *Sir John Leigh* was, at the time of executing the said Will, of sound and disposing Mind and Understanding.
- VII. For that the Appellants are decreed, by proper Conveyances and Assurances in the Law, to convey the Premises in question, to the Respondents *Mary Bennett* and *Anne Spencer*, and their Heirs; which being not possible to be done save by Fine, the same Will not only absolutely bar and extinguish her the said Appellant *Frances's* own Right, but also the Right and Title of her Issue, under the Will of *Sir John Leigh* and the Respondent *Jasper-Leigh Jones* her eldest Son, being an Infant, will thereby be prejudiced in his Right of shewing Cause against the said Decree, when he shall attain his Age of Twenty-one Years, and of putting in another Answer, and making such new Defence as he shall then be advised to make.

*Wherefore, and for divers other Reasons, the Appellants humbly hope, That the said Decree shall be reversed, and that the said Indentures of Lease and Release of the 9th and 10th of September 1737, shall be established, and the Trust thereof performed, or otherwise, that the Appellants shall have an Opportunity of trying their Title at Law by a Jury of the Neighbourhood, where the said Sir John Leigh usually resided, and who will be able to judge of his Capacity or Incapacity, when the Witnesses on both Sides are brought Face to Face, or that Your Lordships will be pleased to make such other Order for the Appellants Relief, as Your Lordships, in your great Wisdom and Justice, shall think fit.*

RICHARD LLOYD.  
A. HUME-CAMPBELL.

THE APPELLANTS CASE.

*Jasper Jones, Esq; and*  
his Wife } Appellants;  
*John Bennett and Henry*  
*Spencer, Gent. and* } Respondents.  
their Wives, and  
others

To be heard at the Bar of the House of  
LORDS, on Wednesday the 12th Day of  
December 1744.

